

WALLER LANSDEN DORTCH & DAVIS

A PROFESSIONAL LIMITED LIABILITY COMPANY

NASHVILLE CITY CENTER

511 UNION STREET, SUITE 2100

POST OFFICE BOX 198966

NASHVILLE, TENNESSEE 37219-8966

(615) 244-6380

FAX (615) 244-6804

www.wallerlaw.com

RECEIVED

2004 MAY 21 PM 1:55

WALLER LANSDEN DORTCH & DAVIS

A PROFESSIONAL LIMITED LIABILITY COMPANY

809 SOUTH MAIN STREET

POST OFFICE BOX 1035

COLUMBIA, TENNESSEE 38402-1035

(931) 388-6031

WALLER LANSDEN DORTCH & DAVIS, LLP
AFFILIATED WITH THE PROFESSIONAL LIMITED LIABILITY COMPANY
520 SOUTH GRAND AVENUE, SUITE 800
LOS ANGELES, CALIFORNIA 90071
(213) 362-3680

D. Billye Sanders
(615) 850-8951
bsanders@wallerlaw.com

May 21, 2004

VIA HAND DELIVERY

Deborah Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37219

Re: Petition of Chattanooga Gas Company for Approval of Adjustment
of its Rates and Charges and Revised Tariff
Docket Number 04-00034

Dear Chairman Tate:

Enclosed you will find original and thirteen copies of the Response of Chattanooga Gas Company to the Consumer Advocate and Protection Division's Motion to Extend the Hearing Time to Nine Months in this docket. Because of the time sensitive nature of this docket, we respectfully request expedited consideration of this motion and of Chattanooga Gas Company's proposed procedural schedule.

Please contact me if you have any questions.

Sincerely,



D. Billye Sanders
Attorney for Chattanooga Gas Company

DBS/hmd
Enclosures

cc: Parties of record
Archie Hickerson
Steve Lindsey
John Ebert, Esq.
Elizabeth Wade, Esq.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

May 21, 2004

IN RE: PETITION OF CHATTANOOGA) Docket No 04-00034
GAS COMPANY FOR APPROVAL OF)
ADJUSTMENT OF ITS RATES AND)
CHARGES AND REVISED TARIFF)

**RESPONSE OF CHATTANOOGA GAS COMPANY TO CONSUMER
ADVOCATE AND PROTECTION DIVISION'S MOTION TO EXTEND THE
HEARING TIME TO NINE MONTHS**

Comes now Chattanooga Gas Company (CGC) and files the following response to the Motion to Extend the Hearing Time to Nine Months filed by Consumer Advocate and Protection Division (CAPD).

1. In its Motion to Extend the Hearing Time to Nine Months (CAPD's Motion), the CAPD cites no good cause for its motion other than its belief that "if a hearing is held in June there is a great likelihood that the Consumer Advocate will not have adequate time to prepare its case."¹ Chattanooga Gas Company (CGC) opposes the CAPD's Motion and advocates moving forward to conclude the proceedings within six months of filing the Petition in this docket. Therefore, CGC respectfully requests that the CAPD's Motion be denied

2. CGC's Petition for Approval of Adjustment of its Rates was filed on January 26, 2004. Therefore, pursuant to T.C.A. § 65-5-203, if the Tennessee Regulatory Authority (TRA) does not render a decision on the Petition at the

¹ CAPD Motion, p 6, paragraph 11
1020143 5

expiration of six months from the filing date (i.e., July 26, 2004), CGC may place the rates into effect subject to refund

Tennessee Code Annotated § 65-5-203 provides in part:

(b) (1) If the investigation has not been concluded and a final order made at the expiration of six (6) months from the date filed of any such increase, change or alteration, the utility may place the proposed increase, change or alteration, or any portion thereof, in effect at any time thereafter prior to the final authority decision thereon upon notifying the authority, in writing, of its intention so to do; provided, that the authority may require the utility to file with the authority a bond in an amount equal to the proposed annual increase conditioned upon making any refund ordered by the authority as hereinafter provided.

(2) Where increased rates or charges are thus made effective, the interested utility shall maintain its records in such a manner as will enable it, or the authority, to determine the amounts to be refunded and to whom due, in the event a refund is subsequently ordered by the authority as hereinafter provided. Upon completion of the hearing and decision, the authority may order the utility to refund, to the persons in whose behalf such amounts were paid, such portion of such increase, change or alteration as shall have been collected under bond and subsequently disallowed by the authority. If the authority, at any time during the initial three (3) months' suspension period, finds that an emergency exists or that the utility's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the three-month period, the authority may permit all or a portion of the increase, change or alteration to become effective under such terms and conditions as the authority may by order prescribe. Any increase, change or alteration placed in effect under the provisions of this subsection (b) under bond may be continued in effect by the utility, pending final determination of the proceeding by final order of the authority or, if the matter be appealed, by final order of the appellate court. Should the final order of the authority be appealed while increased rates or charges are being collected under bond, the court shall have power to order an increase or decrease in the amount of the bond as the court may determine to be proper. In the event that all or any portion of such rates or charges have not been placed into effect under bond before the authority, the court considering an appeal from an order of the authority shall have the power to permit the utility to place all or any part of the rates or charges into effect under bond.

(c) In the event the authority, by order, directs any utility to make a refund, as provided in subsection (b), of all or any portion of such increase, change or

alteration, the utility shall make the same within ninety (90) days after a final determination of the proceeding by final order of the authority or, if the matter be appealed, by final order of the appellate court, with lawful interest thereon.

3. If the CAPD's Motion is granted, and CGC were to place its proposed rates in effect subject to refund, the TRA must decide various related issues such as whether to require a bond and what the lawful interest on any refund would be. If the case is not decided in six months, CGC anticipates that it would give notice of its intention to put its proposed rate increase into effect subject to refund. If the Authority were to require a bond as permitted by T.C.A. § 65-5-203(b)(1), CGC estimates that the cost of a bond would be \$55,200.

In addition, if the TRA were to determine a different rate was just and reasonable, CGC would have to recalculate the bills for each customer based upon historic usage². CGC estimates the cost of the accounting portion of the refund process to be \$25,000, including monitoring the refund process during the month in which it occurs.

CGC asserts that its shareholders should not bear the burden of these additional costs, currently estimated at \$80,200. Rather, CGC contends that these costs would be borne by its ratepayers. Rather than debating and adjudicating issues related to delay and incurring these additional expenses, CGC reiterates its position that the parties and the Agency should devote their efforts to moving forward with the proceedings

² Note that this is a different and more cumbersome process than the one used under the Purchased Gas Adjustment (PGA) Rule, the PGA refunds are based upon future gas volume usage and do not require recalculation of individual customer's bills

4 The CAPD asserts that “[i]f the Consumer Advocate is not allowed adequate time to prepare its case, the consumers of Tennessee could suffer irreparable harm in the form of an unjustified rate increase.”³ Of course, CGC disagrees with the assertion, yet, if this motion is granted, Tennessee consumers may be forced to incur the expense of the CAPD’s inability to prepare its case.

5. Contrary to the CAPD’s assertion that CGC did not follow the voluntary Minimum Filing Guidelines (which the CAPD implies contributed to its inability to prepare its case), as of February 27, 2004, the day after the CAPD filed its petition to intervene in this docket, CGC had filed and responded to 92 of the 99 items included in the Guidelines. Moreover, copies of CGC’s Petition and the Guideline filings were voluntarily served on the CAPD prior to the CAPD’s filing a petition to intervene. CGC offered legitimate explanations for the absence of seven items. For two of the Guidelines requests (#30 and #41), CGC noted the proprietary nature of the materials and offered to provide the information subject to the entry of a protective order in this docket⁴. Request #55 includes a Class Cost of Service Study, if prepared. No Class Cost of Service Study has been prepared by CGC in this proceeding. Finally, CGC does not have the data requested in 94 through 97.

While the CAPD cites “belated” filing of certain proprietary Guidelines information in its motion, CGC’s confidential responses to the CAPD’s data requests were filed on the same date the Protective Order was entered, i.e., May 6, 2004. The confidential responses to the Guidelines and to the Staff data requests were

³ CAPD Motion at 2, 1st full paragraph

⁴ CGC filed a proposed Protective Order with its Petition on January 26, 2004

hand delivered at the pre-hearing conference on Monday, May 10, and likely would not have arrived any sooner if they have been mailed from the Company, which had possession of the documents.

As this summary demonstrates, CGC has been entirely forthcoming *in a timely manner* with *all* the Guidelines information in its possession.

6. The CAPD contends that as of this time it has been unable to obtain necessary factual information to which it is entitled. To the contrary, CGC provided substantive answers to all of the discovery requests that it is required to answer under the TRA Rules (See TRA Rule 1220-1-2-11).

In addition to 40 discovery requests propounded by the CAPD and the responses to the Minimum Filing Guidelines, CGC has already responded to 104 data requests issued by the TRA Staff and 40 discovery requests of the Chattanooga Manufacturers Association.

7. At the status conference held on May 10, 2004, the Hearing Officer requested that CGC and the CAPD attempt to resolve the issue of whether the CAPD would be permitted to exceed the 40 question limit. CGC has made a good faith effort to resolve this issue; however to date, the parties have been unable to reach a compromise. A motion regarding this issue is pending before the hearing officer.

8. Regarding petitions for rate relief, T.C.A. § 65-5-203 (a) provides in part: "...that the authority shall give the investigation preference over other matters pending before it and shall decide the matter as speedily as possible, and in

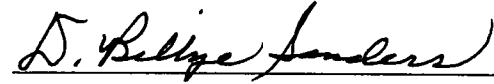
any event not later than 9 months after the filing of the increase, change or alteration.” To the best of CGC’s knowledge, neither the TRA nor its predecessor agency, the Tennessee Public Service Commission, has ever failed to decide a gas company rate case within the six-month statutory period, after which the Petitioner is allowed to put the rates in effect subject to refund. CGC acknowledges that the procedural schedule for completing this case by July 26 will be tight. In order to facilitate moving forward, CGC has attached a proposed procedural schedule. Certainly, if the TRA determines that it cannot reasonably complete its investigation and the hearing of Chattanooga Gas Company’s Petition within six months, CGC will defer to the judgment of the Agency. However, the CAPD has not provided adequate justification to delay the proceedings. Regardless of the TRA’s decision on the CAPD’s Motion, in light of the events necessary to bring this proceeding to conclusion and the limited time frame under the statute, CGC respectfully requests that the remaining procedural schedule for this proceeding be developed as soon as possible, with appropriate input from the parties.

WHEREFORE, CGC respectfully requests that the CAPD’s motion be denied

Respectfully submitted,

CHATTANOOGA GAS COMPANY

By:

A handwritten signature in cursive script, reading "D. Billye Sanders", is written over a horizontal line.

D. Billye Sanders, Esq.
Waller Lansden Dortch & Davis
A Professional Limited Liability
Company
511 Union Street, Suite 2700
Nashville, TN 37219
(615) 244-6380

Its Attorney

Proposed Procedural Schedule

May 24, 2004—Hearing Officer decision on Motions for additional discovery

May 26, 2004—If additional discovery is ordered, CGC additional responses and objections

June 1, 2004—Intervenors' Testimony

June 8, 2004—CGC Supplemental Discovery Requests

June 15, 2004—Intervenors' Responses to Supplemental Discovery

June 22, 2004—CGC Rebuttal Testimony

June 29-July 1, 2004—Hearing

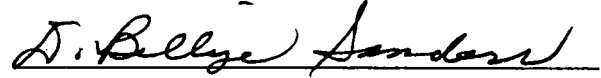
July 6, 2004—Transcript from Court Reporter

July 15, 2004—Briefs

July 26, 2004—Decision --Special TRA Conference

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May 2004, a true and correct copy of the foregoing document was delivered by hand delivery or U.S. mail postage prepaid to the other Counsel of Record listed below.


D. Billye Sanders, Esq.

Vance Broemel
Assistant Attorney General
Tim Phillips
Assistant Attorney General
Office of Attorney General
Consumer Advocate and Protection Division
2nd Floor
425 5th Avenue North
Nashville, TN 37243-0491
Timothy.Phillips@state.tn.us
Vance.Broemel@state.tn.us

Mailing address:
P.O. Box 20207
Nashville, TN 37202

David C Higney, Esq.
Grant, Konvalinka & Harrison, P.C.
633 Chestnut Street, 9th Floor
Chattanooga, TN 37450-0900
423-756-8400 (phone)
423-756-0643 (fx)
dchigney@gkhpc.com

Henry M. Walker, Esq.
Boult Cummings, Conners & Berry, PLC
414 Union Street, Ste 1600
Nashville, TN 37219
615-244-2582 (phone)
615-252-6380 (fax)
hwalker@boultcummings.com

Dale Grimes, Esq.
Bass, Berry & Sims PLC
AmSouth Center
Suite 2700
315 Deaderick Street
Nashville, TN 37238
dgrimes@bassberry.com